

*Pro/Leg*

OLC 78-2697/1

24 August 1978

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MEMORANDUM FOR: [REDACTED]  
Office of General Counsel  
STAT  
FROM: [REDACTED]  
Chief, Legislation Staff  
Office of Legislative Counsel  
SUBJECT: H.R. 13901

1. Attached is a copy of H.R. 13901, a bill recently introduced by Representative McClory that would protect against the unauthorized disclosure of identities of "certain individuals engaged in foreign intelligence activities." While Representative McClory's bill is similar in many respects to other legislation introduced in both the Senate and House during this Congress, it is structured somewhat differently.

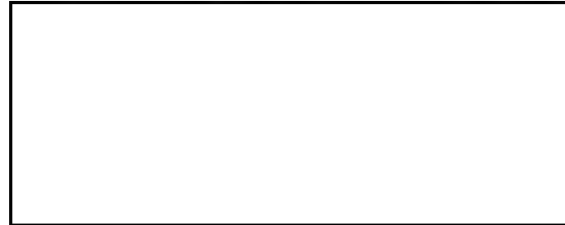
a. H.R. 13901 would establish two classes of potential defendants. The first would be those individuals who acquire, pursuant to authority of law or Executive Order, information identifying or tending to identify individuals or entities as having been associated with a U.S. Government foreign intelligence or counterintelligence agency, and who disclose that information without authorization. This is the class of defendants included in most of the other bills on this matter. The second class of potential defendants in Representative McClory's bill, who would not fall within the other similar bills, are those who acquire the information on the identities of individuals, which information has been designated as requiring protection pursuant to statute or Executive Order, and who willfully disclose such information; to be guilty of this offense, the defendant must also know or have reason to believe that the information is protected by law or Executive Order and that the disclosure may "prejudice the life or physical safety of the individual identified." A defendant in this second class would not have had to come into possession of the information pursuant to authority of law or Executive Order.

b. The McClory bill contains three bars to prosecution that are similar, though not identical, with those in the Bentsen bill (S. 1578).

c. The McClory bill contains no disclaimer of conspiracy or accomplice liability, as does S. 1578, for example.

d. Unlike the similar bills, the McClory bill provides for potential extraterritorial jurisdiction, in that, among other things, jurisdiction would lie if the person who committed the offense is a U.S. citizen or an alien lawfully admitted for permanent residence. This jurisdiction provision appears aimed at acquiring jurisdiction over a person such as Philip Agee.

2. We can discuss this and other bills, in the context of developing our own legislative proposal, as soon as we hear back from the Department of Justice, or sooner.



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